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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PERFECT 10, INC., a California  
corporation,

Plaintiff,

v.

GIGANEWS, INC., a Texas  
corporation; LIVEWIRE SERVICES,  
INC., a Nevada corporation; and DOES  
1 through 100, inclusive,

Defendants.

Case No.: 11 CV 0905 H (MDD)

**DECLARATION OF SEAN  
CHUMURA IN SUPPORT OF  
PERFECT 10'S MOTION FOR  
PRELIMINARY INJUNCTION  
AGAINST DEFENDANTS  
GIGANEWS, INC. AND LIVEWIRE  
SERVICES, INC.**

Date: August 15, 2010  
Time: 10:30 a.m.  
Place: Courtroom 13, 5<sup>th</sup> Floor  
Judge: Marilyn L. Huff

Demand for Jury Trial  
Discovery Cut-Off Date: None Set  
Pretrial Conference Date: None Set  
Trial Date: None Set

1 I, Sean Chumura, declare as follows:

2 1. I am a professional programmer with over 15 years of experience in  
3 Computer Security and Computer Forensics. I was a student and protégé of  
4 Michael R. Anderson, a pioneer in the Science of Computer Forensics. I have  
5 testified as an expert in court proceedings in the field of Computer Forensics. I  
6 have an issued patent in which I am a co-inventor, in the field of computer  
7 security. I have worked with the federal, state, and local governments, as well as  
8 foreign governments and private industry, in the field of computer security and  
9 computer forensics. I have been certified by NTI, one of the most knowledgeable  
10 and respected firms for forensic computer science, for governmental and private  
11 sector computer forensics. I was admitted into the prestigious Washington, D.C.  
12 Law Enforcement Association HTCC (High Tech Crime Consortium group) by  
13 confirmation from the FBI, and I am a member of numerous task forces and  
14 associations. The following are some of the entities I have done work for over  
15 the past four years: Computer Sciences Corporation, D.I.S.A. (Defense  
16 Information Systems Agency), D.H.S. (Department of Homeland Security),  
17 F.B.I. (Federal Bureau of Investigation), JFCOMM (Joint Forces Command),  
18 LGB Associates Inc., Lockheed Martin, NOW Solutions, Oasis Network LLC,  
19 Northrup Grummen, Perfect 10, Inc., Sun Microsystems, Transaction Solutions,  
20 VCSY (Vertical Computer Systems), and Westinghouse. For some of the projects  
21 that I have worked on, I have had a Top Secret security clearance.

22 2. I have consulted for the FBI in the areas of cyberterrorism, forensic  
23 computer investigation, and white collar crime. I have extensive experience  
24 writing computer programs, including programs to protect computers from  
25 viruses, denial of service attacks, and other malicious acts. I have also written  
26 programs to investigate piracy, to detect financial fraud, and to allow computer  
27 networks to identify computers that are no longer functioning properly due to  
28 software issues and correct those problems in an automated fashion. I also co-

1 founded the first private cyber warfare/terrorism defense center and helped  
2 develop the technology to identify attacks against infrastructure in near real-time.

3 3. I submit this declaration in support of Perfect 10, Inc.. I have spent  
4 approximately a month using and analyzing the services provided by  
5 giganews.com, usenet.com, and other USENET paysites. I have written a program  
6 for Perfect 10 which automatically downloaded images from USENET paysites.  
7 As I result of writing that program, and because of my many years of experience  
8 with the Internet, I am very familiar with the operation of the USENET,  
9 giganews.com, usenet.com, and other USENET paysites. In my experience, all  
10 USENET paysites that were compatible with News Rover, which included  
11 giganews.com, powerusenet.com, and usenet.com, operated in the same fashion in  
12 conjunction with News Rover and offered the same infringing materials.

13 4. One way to access materials offered by a USENET paysite, is for the  
14 user to tell a newsgroup "reader" such as News Rover, which website the user has  
15 subscribed to, and provide News Rover with a username and password from that  
16 website. The user can then perform searches on News Rover and download  
17 whatever pirated full-length movies, songs, computer software, or images the user  
18 desires.

19 5. I have also studied the operation of various other infringers including  
20 Napster, Grokster, thepiratebay.org, isohunt.com, and limewire.com. None of  
21 those infringers stored copyrighted materials on their servers, or sold access to  
22 copyrighted material.

23 6. It is common knowledge that people who post to the USENET have  
24 not entered into agreements with copyright holders to copy or post any of the  
25 following: 1) Full-length Hollywood movies, 2) Songs that are being sold by the  
26 Recording industry, 3) Software that is sold by major software companies, and 4)  
27 Images that are being sold by copyright holders. As a result, it is well known that  
28 most materials that are offered for sale by USENET paysites, including

1 Defendants', are infringing. Obviously infringing materials such as full-length  
2 movies, popular songs, and copyrighted images, are almost always found in  
3 newsgroups whose names begin with "alt.binaries." The term "binaries" is a  
4 reference to the fact that the articles therein typically contain media (pictures,  
5 movies, etc.) rather than simple textual messages.

6 7. A significant number of the alt.binaries newsgroups have names  
7 indicating that they offer infringing materials, such as alt.binaries.dvd.movies,  
8 alt.binaries.movies.divx, alt..binaries.movies, alt.binaries.multimedia.vintage-film,  
9 alt.binaries.multimedia.smallville, alt.binaries.classic.tv.shows,  
10 alt.binaries.startrek,alt.binaries.multimedia.startrek, alt.binaries.james-bond,  
11 alt.binaries.tv.x-files, alt.binaries.beatles, alt.binaries.dvd.music,  
12 alt.binaries.mpeg.video.music, alt.binaries.mp3, alt.binaries.music.springsteen,  
13 alt.binaries.sounds.mp3.full-album, alt.binaries.sounds.mp3.complete\_cd,  
14 alt.binaries.sounds.mp3.classic-rock, alt.binaries.sounds.mp3. 1970s,  
15 alt.binaries.sounds.mp3.rap-hiphop, alt.binaries.sounds.mp3. bootlegs,  
16 alt.binaries.playboy, alt.binaries.full.post.verified.playboy, alt.binaries.penthouse,  
17 alt.binaries.warez, and alt.binaries.warez.quebec-hackers, among many others.  
18 Warez is a well-known term for pirated materials.

19 8. I do not believe it is possible for a USENET provider, such as  
20 Defendants, to not be aware of the presence of massive infringement residing on  
21 their servers, for several reasons. First, as discussed above, it is common  
22 knowledge that posters do not have the right to post full-length Hollywood movies,  
23 songs by the Beatles, the Rolling Stones, and other popular groups, programs sold  
24 by Microsoft and Adobe (among others), and Playboy and Perfect 10 images.  
25 Second, the names of the newsgroups reflect the presence of illegal materials.  
26 Third, when Giganews wrote the computer code for managing its website and its  
27 servers, it must have written that code in such a way so that its servers could store  
28 and manipulate very large files such as movies. It must have known, when it

1 wrote its server code, how movies, TV shows, songs, and other large files would  
2 be stored, indexed, and copied. In other words, the program was written  
3 specifically to accommodate massive amounts of infringing material. Fourth, I  
4 have read an archived web page from giganews.com that stated that “News Rover  
5 has built-in MP3 and File Locators that search all Giganews newsgroups for music,  
6 pictures, and movies....” That means that Giganews knew that it was storing large  
7 quantities of infringing movies and songs. Finally, Giganews claims that it hosts  
8 9,000 terabytes of materials – which is staggering in scope (1000 gigabytes = 1  
9 terabyte.) Non-media files such a text-based messages are very small and would  
10 only occupy a tiny fraction of the 9,000 terabytes of materials that Giganews  
11 claims it offers. The rest of the storage must be allocated to huge files, which  
12 would include, most notably, full-length movies and large software programs that  
13 everyone knows are pirated.

14 9. Exhibit 1 was provided to me by Dr. Norman Zada, the President of  
15 Perfect 10, Inc. The highlighted portion of page 1 of Exhibit 1 means that  
16 Giganews makes copies of P10 Images from other USENET providers’ servers,  
17 and stores them on its servers. It also means that Giganews copies Perfect 10  
18 copyrighted images (“P10 Images”) from its servers and distributes those images to  
19 other USETNET providers. The upper portion of page 2 of Exhibit 1 is a print  
20 screen of what might appear on News Rover during a downloading of files. The  
21 files being downloaded are listed in the middle right. The lower portion of the  
22 screen contains the header information for the message (file) highlighted in blue,  
23 which in this case contains the image RoM\_P10\_Vol2\_06\_Perfect 10\_001.jpg.  
24 The rightmost checkmark appears near what is often referred to as the path. In this  
25 case, the path indicates that the image was first posted on easynews.com and was  
26 subsequently copied by Giganews to its Giganews servers, and then provided to the  
27 user, which in this case was Dr. Norman Zada. The second green check mark, next  
28 to the Message ID, also shows that the image was first posted onto the servers of

1 easynews.com. Pages 3 and 4 of Exhibit 1 explain what the header information  
2 means. Page 3 of Exhibit 1 states, “The ‘Path’ shows from first to last, the news  
3 server from which the message is currently being read, all the news servers through  
4 which it was passed, and lastly, the news server where the message originated.”

## 5 **GIGANEWS MAKES UNAUTHORIZED COPIES OF PERFECT 10** 6 **IMAGES**

7 10. Giganews makes copies of Perfect 10 Images in at least two different  
8 ways. When Giganews saves a copy of a P10 Image it obtains from some other  
9 USENET provider’s servers, Giganews must elect to make at least one copy of that  
10 image, the copy that appears on its servers. For example, in page 2 of Exhibit 1,  
11 Giganews made a copy of the image identified as RoM\_P10\_Vol2\_06\_Perfect  
12 10\_001.jpg from easynews.com and then stored it on Giganews’ servers. Also,  
13 when a user requests a copy of a P10 Image that is stored on Giganews’ servers,  
14 Giganews must elect to make another copy for that user. So if 10,000 users request  
15 a copy of a particular P10 Image stored on Giganews’ servers, Giganews must  
16 elect to make 10,000 copies of that image.

## 17 **GIGANEWS IS MORE INVOLVED IN THE INFRINGING ACTIVITY** 18 **THAN MOST INFRINGING WEBSITES**

19 11. Giganews.com commits all of the following volitional acts: 1) It  
20 copies P10 Images from other USENET providers’ servers without Perfect 10’s  
21 authorization; 2) It stores P10 Images on its servers without authorization; 3) It  
22 makes copies of P10 Images and provides them to users without authorization; and  
23 4) It sells access to P10 Images without authorization. Giganews has complete  
24 control over the infringement which occurs on its website. It determines what  
25 materials are stored on its servers and what materials it offers to its users. It can  
26 remove and/or block any materials it wishes.

27 12. In my experience, Internet users try to obtain content without paying  
28 for it. If they do have to pay to access specific content, they will try to pay as little

1 for it as possible. Thus users will subscribe to a massive infringing paysite like  
2 giganews.com, where they can obtain billions of dollars of full-length movies,  
3 songs, images, and computer software for as little as \$5 a month, rather than  
4 subscribe to a website such as perfect10.com, which offers no full length movies,  
5 songs, third party images or computer software, for \$25.50 a month.

6 13. I have examined some of the images which Dr. Zada claims he sent to  
7 Giganews as part of Perfect 10's March 25, 2009 DMCA notice. In general, when  
8 the image contains an image identifier such as, for example,  
9 Isabelle\_Funaro\_05.jpg, Giganews can search for that image identifier using News  
10 Rover to locate that infringing image, the name of the group of images in which it  
11 appears, the uploader of that group of images, the message-ID associated with that  
12 image, and whatever other information Giganews claims it requires. Giganews can  
13 also use readily available image recognition technology to block copies of that  
14 image from ever being stored on giganews.com or offered to Giganews members.  
15 Thus, providing copies of the actual infringing images with visible Image  
16 Identifiers is more than sufficient for Giganews to identify and locate the  
17 infringing material, and is in fact the best way that I know of to provide such  
18 notice. Giganews, however, requests instead that the copyright holder provide the  
19 message-ID associated with each image. That is not feasible if large numbers of  
20 infringements are involved, because the message-ID is not downloaded with the  
21 image. Thus, for each image, the copyright holder would have to manually cut and  
22 paste the message-ID into a spreadsheet, which would take weeks if thousands of  
23 images were infringed. Furthermore, a list of message-IDs by itself would be  
24 incomprehensible and provide no useful information as to what was infringed.

25 14. I have also examined Giganews' April 7, 2009 letter to Perfect 10.  
26 The repeated contention in that letter that "We cannot locate any article without the  
27 Message ID," is not correct. As I explained in the prior paragraph, the article may  
28 be quickly found by searching News Rover using the image identifier. In fact, I

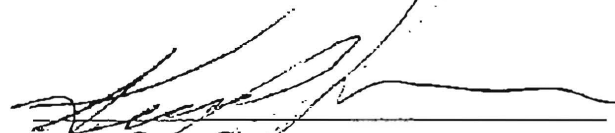


1 have been able to search News Rover using the image identifier but I have not been  
2 able to search News Rover using the message-ID. Finally, Giganews suggests in  
3 its letter it contacts the poster of the article. However, in my experience, most of  
4 the posters list phony email addresses. Thus, it may not be possible for Giganews  
5 to contact the poster, particularly if the post was not made to Giganews' servers.

6 15. Even with today's fast computers, it takes an enormous amount of  
7 time and bandwidth to upload a full-length movie to USENET servers. In 2003, it  
8 might have taken as long as ten hours to upload a full-length movie. Anyone who  
9 uploads copyrighted materials en masse to USENET servers risks substantial civil  
10 liability if not possible prosecution for criminal copyright infringement.  
11 Furthermore, because entities such as Megaupload.com, Hotfile.com, and many  
12 other infringers pay users to upload infringing materials to their servers, I believe it  
13 unlikely that there is no commercial relationship between Defendants and  
14 uploaders. If the uploaders were truly independent third parties, there would be far  
15 less material uploaded, and the uploading would not be uniform. In other words,  
16 ten copies of a particular popular image or movie might be uploaded, and no copies  
17 of most others.

18 I declare under penalty of perjury under the laws of the United States of  
19 America that the foregoing is true and correct to the best of my knowledge.

20 Executed on June 23, 2011 at Pittsburgh, Pennsylvania.

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23 Sean Chumura  
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